



Education Council Amendment Rules 2018

Pursuant to section 388 of the Education Act 1989, the Education Council of Aotearoa New Zealand, after consultation in accordance with subsection (3) of that section, makes the following rules.

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Rules

1 Title

These rules are the Education Council Amendment Rules 2018.

2 Commencement

These rules come into force on 19 May 2018.

3 Principal rules

These rules amend the Education Council Rules 2016 (the **principal rules**).

4 Rule 3 amended (Interpretation)

(1) In rule 3(1), definition of **child or young person**, paragraph (b), replace “student” with “learner”.

(2) In rule 3(1), revoke the definition of **competence assessor**.

(3) In rule 3(1), replace the definition of **Competence Authority** with:

Competence Authority means the Competence Authority established under the Act and these rules

(4) In rule 3(1), definition of **panel**, after “Committee”, insert “, the Competence Authority,”.

(5) In rule 3(1), insert in their appropriate alphabetical order:

Code of Professional Responsibility means the code of conduct for teachers established and maintained by the Education Council under section 387 of the Act

controlled drug has the meaning given in section 2(1) of the Misuse of Drugs Act 1975

professional practice evaluator means a person appointed by the Education Council to investigate and evaluate matters relating to competence

psychoactive substance has the meaning given in section 9 of the Psychoactive Substances Act 2013

Registration Panel means the group of persons to whom the Education Council has delegated, under section 389 of the Act and rule 60B, powers relating to applications for teacher registration

5 Rule 4 amended (Overview)

(1) In rule 4(1)(f), replace “competence assessors” with “professional practice evaluators”.

(2) After rule 4(1)(f), insert:

(fa) provide for certain applications for teacher registration to be referred to a Registration Panel for determination (*see* Part 7A); and

- (3) In rule 4(1)(g), after “operation”, insert “, and the membership and operation of the Registration Panel”.

6 Rule 9 replaced (Criteria for reporting serious misconduct)

Replace rule 9 with:

9 Criteria for reporting serious misconduct

- (1) A teacher’s employer must immediately report to the Education Council in accordance with section 394 of the Act if the employer has reason to believe that the teacher has committed a serious breach of the Code of Professional Responsibility, including (but not limited to) 1 or more of the following:
- (a) using unjustified or unreasonable physical force on a child or young person or encouraging another person to do so:
 - (b) emotional abuse that causes harm or is likely to cause harm to a child or young person:
 - (c) neglecting a child or young person:
 - (d) failing to protect a child or young person due to negligence or misconduct, not including accidental harm:
 - (e) breaching professional boundaries in respect of a child or young person with whom the teacher is or was in contact as a result of the teacher’s position as a teacher; for example,—
 - (i) engaging in an inappropriate relationship with the child or young person:
 - (ii) engaging in, directing, or encouraging behaviour or communication of a sexual nature with, or towards, the child or young person:
 - (f) viewing, accessing, creating, sharing, or possessing pornographic material while at a school or an early childhood education service, or while engaging in business relating to a school or an early childhood education service:
 - (g) acting dishonestly in relation to the teacher’s professional role, or committing theft or fraud:
 - (h) being impaired by alcohol, a drug, or another substance while responsible for the care or welfare of a learner or a group of learners:
 - (i) permitting or acquiescing in the manufacture, cultivation, supply, offer for supply, administering, or dealing of a controlled drug or psychoactive substance by a child or young person:
 - (j) an act or omission that may be the subject of a prosecution for an offence punishable by imprisonment for a term of 3 months or more:
 - (k) an act or omission that brings, or is likely to bring, the teaching profession into disrepute.

- (2) Misconduct described in any of paragraphs (a) to (e) and (k) of subclause (1) may be—
 - (a) a single act; or
 - (b) a number of acts forming part of a pattern of behaviour, even if some of the acts when viewed in isolation are minor or trivial.

7 Rule 11 amended (Investigation and referral of report or complaint by chief executive)

In rule 11(1)(c), replace “competence assessor” with “professional practice evaluator”.

8 Rule 12 amended (Notification to teacher and current employer of referral of report or complaint to Complaints Assessment Committee, competence assessor, or Education Council)

- (1) In the heading to rule 12, delete “**to Complaints Assessment Committee, competence assessor, or Education Council**”.
- (2) In **rule 12(1) and (2)(b)(ii)**, replace “competence assessor” with “professional practice evaluator”.
- (3) Replace rule 12(3) with:
 - (3) The chief executive must notify the teacher’s current employer of the referral, unless the chief executive considers notification is not appropriate.
 - (4) A notice of referral to the teacher’s employer must describe the nature of the matter that the report or complaint is about.

9 Rule 38 amended (Application of this Part)

In rule 38, replace “competence assessor” with “professional practice evaluator”.

10 Rule 40 amended (Investigation by competence assessor)

- (1) In the heading to rule 40, replace “**competence assessor**” with “**professional practice evaluator**”.
- (2) In rule 40(1) and (2), replace “competence assessor” with “professional practice evaluator” in each place.

11 Rule 41 amended (Report prepared by competence assessor)

- (1) In the heading to rule 41, replace “**competence assessor**” with “**professional practice evaluator**”.
- (2) In rule 41(1) and (2), replace “competence assessor” with “professional practice evaluator”.

12 Cross-heading above rule 42 amended

In the cross-heading above rule 42, replace “*competence assessor*” with “*professional practice evaluator*”.

13 Rule 42 amended (Actions following report prepared by competence assessor that recommends conditions be imposed)

- (1) In the heading to rule 42, replace “**competence assessor**” with “**professional practice evaluator**”.
- (2) In rule 42(2) and (3), replace “competence assessor” with “professional practice evaluator” in each place.

14 Rule 43 amended (Actions following report prepared by competence assessor that makes other recommendations)

- (1) In the heading to rule 43, replace “**competence assessor**” with “**professional practice evaluator**”.
- (2) In rule 43(1)(a), replace “competence assessor” with “professional practice evaluator”.
- (3) Replace rule 43(1)(b) with:
 - (b) the teacher’s practising certificate, authority to teach, or registration be cancelled, the professional practice evaluator may refer the report to the Competence Authority; or
- (4) In rule 43(1)(c), replace “competence assessor” with “professional practice evaluator”.

15 Rule 44 amended (Teacher’s response if report referred to Competence Authority or Education Council)

- (1) In the heading to rule 44, delete “**or Education Council**”.
- (2) In rule 44(1), (2), and (3), delete “or the Education Council”.

16 Rule 45 amended (Meeting of Competence Authority)

- (1) In rule 45(1), replace “competence assessor” with “professional practice evaluator”.
- (2) Replace rule 45(3) with:
- (3) The Competence Authority may do any of the following:
 - (a) adjourn the matter for further consideration:
 - (b) decide to carry out any actions it has authority to take under the Act:
 - (c) take no further action:
 - (d) refer the matter back to the professional practice evaluator for further consideration.

17 Rule 46 replaced (Meeting of Education Council)

Replace rule 46 with:

46 Replacement of member if conflict of interest

- (1) A party may, by notice in writing sent within 5 days after receiving notice of the hearing, object to the assigning of a member of the Competence Authority to participate in the hearing on the grounds that the member was the initiator or otherwise has a conflict of interest.
- (2) The chief executive must determine whether the grounds of objection are valid and, if they are, must replace the member with another member in accordance with rule 63.

18 Rule 47 amended (Conditions imposed)

In rule 47(2), replace “competence assessor” with “professional practice evaluator”.

19 Rule 48 amended (Notice of decision of Competence Authority or Education Council)

- (1) In the heading to rule 48, delete “or Education Council”.
- (2) In rule 48, delete “or the Education Council (as the case may be)”.

20 New Part 7A inserted

After rule 48, insert:

Part 7A**Application for teacher registration referred to Registration Panel****48A Application of this Part**

- (1) This Part applies to an application for registration as a teacher if—
 - (a) the application raises concerns as to whether the applicant is of good character under section 353(a) of the Act; or
 - (b) the application raises concerns as to whether the applicant is fit to be a teacher under section 353(b) of the Act; or
 - (c) the applicant has previously applied to register as a teacher and that application was declined; or
 - (d) the applicant was previously registered as a teacher and that registration was cancelled under section 357 of the Act; or
 - (e) the applicant previously held a practising certificate that was cancelled under section 362 of the Act; or

- (f) the application raises concerns relating to other criteria in section 353 of the Act that the Education Council decides ought to be referred to the Registration Panel.
- (2) If any of the criteria in subclause (1) apply, the chief executive may refer the application to the Registration Panel.
- (3) The Registration Panel may make a decision on the whole application, not only the matter giving rise to the referral.

Referral of application for registration to Registration Panel

48B Notification of referral of application to Registration Panel

- (1) If an application for registration is referred to the Registration Panel, the chief executive must notify the applicant that a referral has been made.
- (2) The notice to the applicant must—
 - (a) include sufficient details so that the applicant understands the reason for the referral; and
 - (b) inform the applicant of the next steps in the process.
- (3) The applicant must be provided with any report or other documentation that will be provided to the Registration Panel.
- (4) The applicant must be given an opportunity to provide further information for the Registration Panel to consider, which may be in the form of written submissions.

Procedure of Registration Panel

48C Meeting of Registration Panel regarding application for registration

- (1) At a meeting of the Registration Panel, the Registration Panel must consider an application for registration that has been referred to it and decide if the application meets the criteria for registration in section 353 of the Act.
- (2) The applicant must be given a reasonable opportunity to be heard, in person or by counsel or another representative, at the meeting.
- (3) Before making a decision on an application for registration, the Registration Panel may do any of the following:
 - (a) request information from the applicant;
 - (b) request information from other persons, with the consent of the applicant;
 - (c) adjourn the matter for further consideration.
- (4) There must be at least 3 members at each meeting of the Registration Panel, where—
 - (a) at least 1 member must be a person who is not a teacher, an employer, or a member of an employing body; and

- (b) at least 2 members must hold current practising certificates; and
 - (c) if appropriate, at least 1 member must be from the same sector as the teacher (that is, early childhood, primary, or secondary sector).
- (5) A meeting of the Registration Panel may be in person, by telephone conference or video link, by exchange of emails, or by any other means that are necessary or convenient.

48D Replacement of members if conflict of interest

- (1) A party may, by notice in writing sent within 5 days after receiving notice of the hearing, object to the assigning of a member of the Registration Panel to participate in the hearing on the grounds that the member has a conflict of interest.
- (2) The chief executive must determine whether the grounds of objection are valid and, if they are, must replace the member with another member.

Notice of decision of Registration Panel

48E Notice of Registration Panel's decision

A notice of the Registration Panel's decision must be sent to the applicant as soon as practicable.

21 Part 8 heading replaced

Replace the Part 8 heading with:

Part 8
**Establishment, membership, and operation of disciplinary bodies,
Competence Authority, and Registration Panel**

22 Rule 55 amended (Operation of panels)

Replace the heading to rule 55 with “**Operation of panels of Disciplinary Tribunal**”.

23 Rules 57 and 58 replaced

Replace rules 57 and 58 with:

57 Establishment of Competence Authority

- (1) A Competence Authority is established.
- (2) The Education Council must appoint the members of the Competence Authority, subject to section 410AA of the Act.

58 Membership of Competence Authority

- (1) The Competence Authority must have at least 5 members.

- (2) All members must hold a current practising certificate except for members appointed under section 410AA(3) of the Act.

58A Operation of panels of Competence Authority

- (1) A panel of the Competence Authority must comprise at least 3 people.
- (2) A panel may perform and exercise, in relation to a complaint, a report, or any other matter referred to it, all of the functions and powers of the Competence Authority.

58B Co-opted members

The Competence Authority may co-opt up to 2 members onto the Authority for their specialist knowledge and expertise in relation to a particular complaint.

58C Validity of proceedings

- (1) The validity of proceedings or a decision of the Competence Authority is not affected by—
- (a) a defect or deficiency in the appointment of a member of the Competence Authority or a panel; or
 - (b) the temporary absence from a hearing of a member who is participating in the hearing.
- (2) However, all members must be present during the deliberations.

24 Cross-heading above rule 59 amended

In the cross-heading above rule 59, replace “*competence assessors*” with “*professional practice evaluators*”.

25 Rule 59 amended (Powers of investigators and competence assessors)

In rule 59(1), replace “competence assessor” with “professional practice evaluator” in each place.

26 Rule 60 amended (Investigators and competence assessors not personally liable and indemnity)

- (1) In the heading to rule 60, replace “**competence assessors**” with “**professional practice evaluators**”.
- (2) In rule 60(1) and (2), replace “competence assessor” with “professional practice evaluator” in each place.

27 New rules 60A and 60B and cross-heading inserted

After rule 60, insert:

Registration Panel

60A Membership of Registration Panel

- (1) The Registration Panel must have at least 5 members.
- (2) The Education Council must appoint the members of the Registration Panel.

60B Powers and functions of Registration Panel

- (1) The Education Council delegates its powers and functions under sections 352 to 355 of the Act to the Registration Panel in relation to applications for registration as a teacher to which Part 7A applies.
- (2) Registration Panel members are appointed to exercise the powers and perform the functions delegated under subclause (1) in accordance with—
 - (a) these rules; and
 - (b) guidelines and procedures published by the Education Council.

28 Rule 61 amended (Term of appointment to disciplinary body or Competence Authority)

- (1) In the heading to rule 61, replace “**or Competence Authority**” with “**, Competence Authority, or Registration Panel**”.
- (2) In rule 61(1) and (3), replace “**or the Competence Authority**” with “**, the Competence Authority, or the Registration Panel**”.

29 Schedule 1 amended

In Schedule 1, after Part 1, insert the Part 2 set out in the Schedule of these rules.

Schedule
Transitional, savings, and related provisions

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Part 2

Provisions relating to Education Council Amendment Rules 2018

3 Possible serious misconduct by teacher that occurred before 19 May 2018

- (1) For the purposes of section 394 of the Act, possible serious misconduct by a teacher that occurred before 19 May 2018 must be reported and dealt with in accordance with the principal rules that were in force immediately before that date.
- (2) This clause applies even if the possible serious misconduct was discovered or reported on or after 19 May 2018.

4 Registration applications received on or after 19 May 2018 may be considered by Registration Panel

Only applications for registration as a teacher received by the Education Council on or after 19 May 2018 may be considered by the Registration Panel.

Dated at Wellington this 28th day of March 2018.

Barbara Ala'alatoa
Chairperson
Education Council of Aotearoa New Zealand.

Explanatory note

This note is not part of the rules, but is intended to indicate their general effect.

These rules are the Education Council Amendment Rules 2018 (the **rules**).

These rules come into force on 19 May 2018. They amend the Education Council Rules 2016 (the **principal rules**).

In summary, the rules—

- establish a Competence Authority as provided for in the Education Act 1989 (the **Act**) and provide for its membership and operation; and
- update the criteria for reporting serious misconduct by teachers; and
- provide for a Registration Panel to consider and determine certain applications for teacher registration and provide for the membership and operation of the Panel; and
- replace the term competence assessor throughout the principal rules with the new term professional practice evaluator; and
- make other minor and technical amendments.

The rules include transitional provisions, which have the following effect:

- alleged misconduct that occurs before the rules come into force must be dealt with as if the criteria for reporting had not changed, no matter when the alleged misconduct is discovered or reported;
- only applications for teacher registration that are received after the rules come into force may be considered by the Registration Panel.

Transitional provisions relating to changes to the Competence Authority are set out in Part 2 of Schedule 1 of the Education Act 1989.

Issued under the authority of the Legislation Act 2012.

Date of notification in *Gazette*: 12 April 2018.

These rules are administered by the Education Council of Aotearoa New Zealand.